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EX PARTE OR LATE FILED



February 18, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 - 12th Street, SW
Room: TW-A325
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WT Docket No. 99-168
"Service Rules for the 746-764 and 776-794 MHz Bands"

Dear Ms. Salas:

Today, the undersigned met with Ari Fitzgerald, Legal Advisor to Chairman Kennard, to discuss auction rules for the 746-764 and 776-794 MHz bands. The discussion focused on the Bureau's proposed bid withdrawal procedure.

In the FCC's Public Notice of January 10, 2000, the Bureau proposed a special bid withdrawal procedure that would apply to bidders seeking a 30 MHz nationwide aggregation. As the Notice states, this procedure was proposed "to limit the exposure associated with bid withdrawal for those seeking a 30 MHz nationwide aggregation, while still discouraging insincere bidding". In its comments and reply comments to the Notice, PSINet proposed that this procedure be extended to bidders seeking 30 MHz regional aggregation. Bell Atlantic Mobile (BAM) strenuously objects to the PSINet proposal.

The FCC should be careful not to adopt any rule that favors one business strategy over another and creates an unfair advantage for some bidders in the auction. The PSINet proposal would do exactly that. While it is difficult to quantify the "exposure" associated with bid withdrawal for those seeking all 12 licenses necessary to create a nationwide 30 MHz footprint (a 20 MHz and 10 MHz license in each of 6 regions), the same level of exposure clearly does not apply to regional bidders. In fact, the level of exposure is likely to be greater for a bidder whose business strategy, for example, is to provide a nationwide service employing 20 MHz of spectrum. This conclusion is supported with the following illustration.

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Example 1: Company X is bidding on Region 1 and requires both the 20 MHz and 10 MHz licenses to satisfy its regional business plan. Now, assume that it is the high bidder for the 20 MHz license in Region 1, but fails to win the 10 MHz license. Under the current rules, if Company X were to withdraw its bid for the 20 MHz license it would pay a penalty equal to the difference between its withdrawn bid and the ultimate winning bid for the license in Region 1 ($\Delta B1$).

Example 2: Company Y is bidding on the 20 MHz licenses and requires all six Regions to satisfy its national business plan. Now, assume that Company Y is the high bidder on the 20 MHz licenses in Regions 1-5, but fails to win the 20 MHz license in Region 6. Under the current rules, if Company Y were to withdraw its bids for the 20 MHz licenses in Regions 1-5 it would pay a penalty equal to the difference between its withdrawn bid and the ultimate winning bid for each of the five regional licenses ($\Delta B1 + \Delta B2 + \Delta B3 + \Delta B4 + \Delta B5$).

As shown by these examples, Company Y would clearly have a greater potential exposure if it were to pursue and fail to accomplish its bidding strategy as compared to the potential exposure for Company X. Yet, PSINet's proposal would reduce the risk associated with Company X's strategy, while doing nothing to help Company Y.

If bidders in the 700 MHz auction are bidding rationally (and there's no reason to believe that they will not), one can expect that the difference between the withdrawn bid amount and the ultimate winning bid for any one license is likely to be relatively small. It is true that a 30 MHz nationwide bidder could incur a substantially greater penalty because of the aggregation of these bid differentials; particularly if the bidder had to withdraw from bidding on 11 licenses because of a failure to secure a single license. A somewhat lesser, yet significant, penalty might be borne by a 20 MHz nationwide bidder. However, the same thing cannot be said for a 30 MHz regional bidder. **The FCC should reject PSINet's proposal to apply special bid withdrawal procedures for 30 MHz regional bidders.**

In the Notice, the Bureau proposes that bidders wishing to take advantage of the special bid withdrawal procedures must declare in advance of the auction that they are seeking a 30 MHz nationwide aggregation. Moreover, they "would not be allowed to bid on anything other than all licenses comprising the 30 MHz nationwide aggregation, and must win either this nationwide aggregation or no licenses at all". BAM believes that this condition is appropriate and strikes a reasonable balance between reducing the potential exposure of 30 MHz nationwide bidders while still discouraging insincere bidding. **For this reason, the FCC must ensure that bidders cannot circumvent this rule by**

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registering two affiliated bidders in the auction; one to pursue a 30 MHz nationwide strategy and another to pursue a regional strategy in the event that the nationwide strategy failed.

BAM believes that a more complete combinatorial bidding system could be beneficial if it can be fully utilized by all bidders. However, a more limited combinatorial scheme risks yielding bidding advantages to some bidders over others. The Commission should not be in the business of picking winners and losers. To the extent the Bureau wishes to experiment with a limited combinatorial mechanism, it should limit it to the procedures proposed in the Notice.

Please include a copy of this ex parte presentation in the record for the above captioned proceeding. If you have any questions, you may call me on (202) 336-7873.

A handwritten signature in black ink, appearing to read "Dan R. Bittner". The signature is fluid and cursive, with a large initial "D" and "B".

cc: A. Fitzgerald